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#3

## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/879,372	06/11/2001	R. Raymond May	38866/235737

CONFIRMATION NO. 3834

## FORMALITIES LETTER



\*OC000000006427745\*

000826  
ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

Date Mailed: 08/15/2001

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 710 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- The oath or declaration is missing.  
*A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is \$ 840.**

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

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Attorney's Docket No. 388 235737

COPY OF PAPERS PATENT  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: R. Raymond May  
Appl No.: 09/879,372  
Filed: June 11, 2001  
For: SYSTEMS AND METHODS FOR REVERSE AUCTIONS OF DERIVATIVES

Confirmation No.: 3834

Box Missing Parts  
Commissioner for Patents  
Washington, DC 20231

RESPONSE TO NOTICE TO  
FILE MISSING PARTS OF APPLICATION

Sir:

In response to the Notice to File Missing Parts of Application dated August 15, 2001, enclosed are the following:

- ☒ Part 2 of Formalities Letter or Form PTO-1533  
(Notice to File Missing Parts of Application)
- ☒ Declaration and Power of Attorney for the above-identified application which has been executed by the named inventor(s)
- ☒ Applicant claims small entity status
- ☒ Check in the amount of \$895.00 to cover the filing fee of \$370.00, the \$460.00 fee for Petition for a 3 Month Extension of Time, and the \$65.00 surcharge under 37 C.F.R. § 1.16(e)
- ☐ English Translation and \$130.00 (37 CFR 1.17(k)) fee for filing late.
- ☒ Other: Petition for a 3 Month Extension of Time Under 37 C.F.R. 1.136(a) for Submitting Missing Parts
- ☒ Statement of Facts in Support of Filing on Behalf of Nonsigning Inventor (37 C.F.R. 1.47) with listed attachments:

- ☒ Executive Employment Agreement
- ☒ 2 Assignment Documents
- ☒ Letter to Richard Raymond May
- ☒ Federal Express Shipment Tracking Attachment

Any additional fee or credit may be charged to our Deposit Account No. 16-0605.

Respectfully submitted,

William R. Silverio  
Registration No. 45,383

Customer No. 00826  
ALSTON & BIRD LLP  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Atlanta Office (404) 881-7000  
Fax Atlanta Office (404) 881-7777

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
**Box Missing Parts**, Commissioner for Patents,  
Washington, DC 20231, on January 15, 2002.

  
William Silverio

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COPY OF PAPERS  
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Attorney Docket No. 38866/235737

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: May  
For: SYSTEMS AND METHODS FOR REVERSE AUCTION OF FINANCIAL  
INSTRUMENTS

the specification of which: (check and complete (a), (b), or (c))

- (a) ☐ is attached hereto.  
(b) ☒ was filed on June 11, 2001 as Application No. 09/879,372 and was  
amended on      (if applicable).  
(c) ☐ was described and claimed in International Application No.     , filed on  
    , and as amended on      (if any).

STATEMENT OF FACTS IN SUPPORT OF FILING  
ON BEHALF OF NONSIGNING INVENTOR (37 C.F.R. § 1.47)

This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the non-signing inventor for the above-identified patent application before deposit thereof in the Patent and Trademark Office.

- ☒ Because signing on behalf of the non-signing inventor is by a person or entity showing a sufficient proprietary interest, this statement also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

This statement is being made by the available person having first-hand knowledge of the facts recited therein.

Chip Biggers, Esq.  
Name

VP Business Development and General Legal Counsel  
Title

Blackbird Holdings, Inc.  
112 S. Tryon St. Suite 1800  
Charlotte NC 28284  
Corporate Address

RECEIVED  
MAR 07 2002  
OFFICE OF PETITIONS

05/03/2002 AKELLEY 00000019 160605 09879372

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**LAST KNOWN ADDRESS OF THE NONSIGNING INVENTOR**

Mr. Richard Raymond May

Full name of non-signing inventor

1526 Reverdy Oaks Drive, Matthews, NC 28105

Last known address of non-signing inventor

#4

### **DETAILS OF REFUSAL OF NONSIGNING INVENTOR TO SIGN APPLICATION PAPERS**

Complete copies (specification, including claims and drawings) of Application No. 09/879,372 (the 'present application'), and corresponding declarations, were mailed to Mr. Richard Raymond May (the 'non-signing inventor') to the last-known address identified above on October 11, 2001 and on December 6, 2001. The non-signing inventor has resided at this address for more than 2 years, and to the best knowledge of the undersigned, the non-signing inventor continues to reside at this address. Additionally, the non-signing inventor has previously acknowledged other correspondence mailed to this address.

A copy of the December 6<sup>th</sup> letter is attached hereto along with a shipment statement evidencing the mailing of the documents using Federal Express. The letter includes a request that the non-signing inventor execute an enclosed declaration corresponding to the present application. As noted by the letter, the non-signing inventor was provided with a self-addressed, stamped envelope to return the executed declaration to Blackbird Holdings, Inc. The December 6<sup>th</sup> letter also evidences the previous letter and documents mailed to the non-signing inventor on October 11<sup>th</sup>, 2001.

The non-signing inventor has not expressly refused to sign the declarations forwarded to him. However, despite bona-fide attempts of the undersigned to obtain a signed declaration from the non-signing inventor, the non-signing inventor has been non-responsive.

**PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE  
OR PRESERVE THE RIGHTS OF THE PARTIES**

Application No. 09/879,372 (the 'present application'), filed on June 11, 2001, claims priority to:

1) Provisional Application No. 60/211,890, titled "Systems and Methods for Reverse Auction of Derivatives", filed June 14, 2000; and

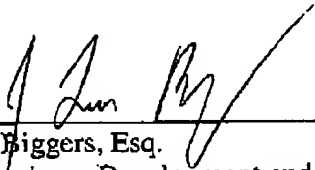
2) Provisional Application No. 60/210,816, titled "Online Digital Marketplaces and Methods for Dealer-Driven Electronic Trading Of Financial Instruments", filed June 9, 2000; and

Assignments for both of the provisional applications identified above were executed by Richard Raymond May (the 'non-signing inventor') to Blackbird Holdings, Inc. Copies of the assignments are attached hereto. The assignments also assign to Blackbird Holding, Inc., all non-provisionals claiming priority to the provisional applications. Therefore, the present application has been assigned to Blackbird Holdings, Inc.

Additionally, attached hereto is a copy of an Executive Employment Agreement between the non-signing inventor and DNI Holdings, Inc., predecessor in interest to Blackbird Holdings, Inc. The Agreement evidences the property rights of DNI Holdings, Inc. in and inventions made during the non-signing inventors employment, and further evidences an agreement to assist DNI Holdings, Inc. in obtaining these rights (see Executive Employment Agreement, page 3, items (b) and (c)). The present application, and provisional applications identified above, were developed by the non-signing inventor during his employment with DNI Holdings, Inc./Blackbird Holdings, Inc.

Blackbird Holdings, Inc., has filed the present application, Application No. 09/879,372, to preserve its rights to the filing dates and priority of the provisional applications identified above. Furthermore, irreparable damage will result to Blackbird Holdings, Inc., if Blackbird Holdings, Inc. loses its priority claim to the provisional patent applications identified above.

Date: 15 JANU2

  
Chip Biggers, Esq.

VP Business Development and General Legal Counsel

Signing on behalf of:  
Blackbird Holdings, Inc.  
112 S. Tryon St. Suite 1800  
Charlotte NC 28284

EXECUTION COPY

EXECUTIVE EMPLOYMENT AGREEMENT, dated as of February 8, 2000, by and between DNI HOLDINGS, INC., a Delaware corporation (the "Employer"), and R. Raymond May, an individual (the "Executive").

In consideration of the agreements, provisions and covenants herein contained, the Employer and the Executive hereby agree as follows:

1. EMPLOYMENT; DUTIES

(a) The Employer engages and employs the Executive, and the Executive hereby accepts engagement and employment, as Chief Executive Officer (CEO) and Chief Technology Officer (CTO) of the Employer.

[PARAGRAPH REDACTED]

(c) The Executive shall devote his full-time business efforts to the performance of his duties hereunder, and such duties shall be performed from the Employer's offices and at such other places as shall be necessary according to the needs, business or opportunities of the Employer (provided that the Executive acknowledges and agrees that the performance by the Executive of his duties hereunder may require substantial travel from time to time by the Executive).

2. TERM

The Executive's employment hereunder shall, unless earlier terminated in accordance with the terms of this Agreement, be for a term of four (4) years commencing on the date hereof and continuing through February 8, 2004 (the "Term").

3. COMPENSATION

[PARAGRAPH REDACTED]

[PARAGRAPHS (b) - (f) REDACTED]

4. BOARD REPRESENTATION

The Employer agrees that, at all times while this Agreement is in effect, it will use reasonable efforts to cause the Executive to be nominated for re-election to the Board.

5. NON-COMPETITION; PROPRIETARY INFORMATION

[PARAGRAPH REDACTED]



however, that nothing herein shall preclude the Executive from making passive investments in publicly traded entities in which he owns less than 5% of the outstanding equity securities.

(b) The Executive agrees that all confidential or proprietary information that has been created, discovered or developed by the Employer, its subsidiaries, affiliates, successors or assigns (collectively, the "Affiliates") (including, without limitation, information relating to the development of the Employer's business and all customer lists, financial information, marketing and business plans, ideas, trade secrets, strategies, information about the Employer's or the Affiliates' employees, consultants or suppliers, records, notes, know-how and data), and/or information in which property rights have been conveyed to the Employer or the Affiliates, shall be the sole property of the Employer or the Affiliates, as applicable, and the Employer or the Affiliates, as the case may be, shall be the sole owner of all copyrights, patents and other rights in connection therewith. All of the aforementioned information is hereinafter called "Proprietary Information." The Executive further agrees that at all times, both during and after the Term, he will keep in confidence all Proprietary Information, and he will not use or disclose any Proprietary Information (or anything directly relating to it) in any manner not directly required for the discharge of his duties as an employee of the Employer without the prior written consent of the Employer or the Affiliates. The Executive acknowledges that the Proprietary Information constitutes a unique and valuable asset of the Employer and each Affiliate, and that any disclosure or other use of the Proprietary Information other than for the sole benefit of the Employer or the Affiliates could cause irreparable harm to the Employer or the Affiliates, as the case may be.

(c) During the Term, the Executive agrees that he will promptly disclose to the Employer, or any persons designated by the Employer, all improvements, inventions, designs, ideas, works of authorship, trademarks, copyrights, trade secrets, marketing plans, strategies, records, notes, know-how, data, made or conceived or reduced to practice or learned by him, either alone or jointly with others (the "Inventions"), during the Term. Furthermore, the Executive agrees that all Inventions shall be the sole property of the Employer to the maximum extent permitted by applicable law and to the extent permitted by law shall be "works made for hire" as that term is defined in the United States Copyright Act (17 USCA, Section 101). The Executive further agrees to assist the Employer in every proper way (but at the Employer's expense) to obtain and from time to time enforce copyrights or other rights on said Inventions.

[PARAGRAPH REDACTED]

[PARAGRAPH REDACTED]

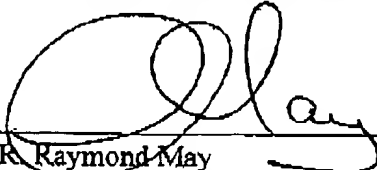
JAN-15-2002 12:39 FROM:D&I ACTIVITY MONITOR 3716887

TO:14048817777

P. 016/021

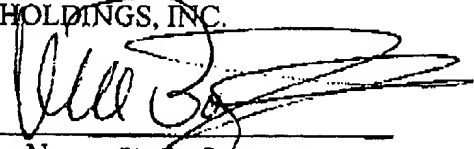
[PAGES 4-8 REDACTED]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

  
R. Raymond May  
1526 Reverdy Oaks Drive  
Matthews, NC 28105

DNI HOLDINGS, INC.

By:

  
Name: M. A. Baxter  
Title: CHAIRMAN

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**Reference Number** SIGNATURES FOR PATENTS

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**Delivered To**

**Delivery Location** MATTHEWS NC

**Delivery Date/Time** 12/06/2001 14:03

**Signed For By** R.MAY

**Service Type** Standard Letter

Scan Activity	Date/Time	Comments
Delivered MATTHEWS NC	12/06/2001 14:03	

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December 6, 2001

Mr. R. Raymond May  
1526 Reverdy Oaks Drive  
Matthews, NC 28105

Dear Mr. May,

Recently you contacted me to encourage me in my pursuit of the patent application work for Blackbird Holdings, Inc. Around the same time, you also requested a copy of your past employment agreement with Blackbird Holdings, Inc.

On October 11<sup>th</sup>, 2001, I sent you a package, which included a copy of the employment agreement you had requested and several documents concerning our patent prosecution. These documents require your signature.

In order to make this process easier for you and faster for me, I also enclosed a self-addressed, stamped envelope, (via Fedex) with proper fees already paid so you would incur no personal cost.

I have not received the papers from you.

The papers I am asking you to sign and return are not required for Blackbird Holdings, Inc. to continue the prosecution of their patents. We can proceed without them.

However, you should be aware that you are delaying the prosecution of our patents and that this added delay, plus the additional legal work (which would not be necessary if you would sign and return those documents), will increase the additional costs, in both time and legal fees, incurred by Blackbird Holdings, Inc. in the prosecution of their patents.

Please sign both the Declaration and Power of Attorney and the Assignment enclosed. Please note that the Assignment also requires a Notary Public.

Sincerely,

Chip Biggers  
General Legal Counsel